



OFFICE OF THE DISTRICT ATTORNEY

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January 30, 2018

Brian Manley, Chief
Austin Police Department
P.O. Box 689001
Austin, Texas 78768-9001

LETTER DECLINING PROSECUTION AFTER INVESTIGATION

Re: *Office-Involved Shooting on October 5, 2018 by Austin Police Department Officer Ryan Mihalik and Officer Erin Littig causing injury to Mark Anthony Herrera (DOB 06/16/1970).*

Dear Chief Manley:

The Office of the Travis County District Attorney ("District Attorney") has reviewed the Austin Police Department Special Investigation Unit's ("APD SIU") investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting. The Austin Police Department was dispatched to 6800 block of Shadywood Dr. in reference to an assist non-emergency that was upgraded to a gun hot-shot call. As officers arrived on the scene, the suspect, who was identified as Mark Anthony Herrera was standing on the street. Herrera was holding what appeared to be a firearm but later identified as a BB pistol, officers began to give Herrera multiple commands to drop the gun. Herrera began pointing his weapon at a nearby civilian and at officers, at which time Officer Erin Littig and Officer Ryan Mihalik fired their duty weapons. Herrera was struck at least twice but survived his injuries. This letter is to inform you that, after reviewing the facts and circumstances surrounding the shooting of Herrera, the District Attorney declines to prosecute Officers Ryan Mihalik and Officer Erin Littig for their actions during the incident.

The District Attorney's Office monitored and reviewed the investigation by the Austin Police Department in this incident pursuant to the officer-involved shooting protocol that is posted on its official website. A copy of this letter will also be posted on the District Attorney's official website.¹

Mark Herrera has been charged with Terroristic Threat in two different cases that are pending in misdemeanor and felony court.

The Civil Rights Division of this office has a policy of issuing letters setting out a thorough factual and legal analysis of any officer-involved shooting where the elected District Attorney has determined a grand jury review of the officer's use of force is not necessary. However, when there are pending criminal cases arising out of these incidents, as there are in this case, the accused's right to a fair trial and prosecutorial ethical rules prohibit the release of such information.²

Consequently, our more comprehensive analysis will be published after the criminal matters against Mark Herrera are resolved.

Sincerely,


Margaret Moore

¹ <https://www.traviscountytx.gov/district-attorney/cru>.

² Texas Disciplinary Rules of Professional Conduct 3.07 (a). "The Rules of Professional Conduct state the trial attorneys have a duty to ensure a trial free from the taint of publicity by specifically prohibiting a lawyer from making statements that may materially prejudice an adjudicatory proceeding," Edward L. Wilkinson, Legal Ethics & Texas Criminal Law 86 (2006)(citing *Tex. Disciplinary R. Prof'l Conduct 3.07 (a) & comment 1*).